"I am satisfied that the defence has raised triable issues but I am doubtful as to the bona fide of the defence relating to money paid by the plaintiff on behalf of the defendant. I therefore make an order that unless the defendant pays into court the sum of $37,960.11 within fifteen days from date hereof, the defence relating to this claim should be struck out and the plaintiff be at liberty to enter judgment against the sum claimed. Subject to this condition, the application is refused. I make no order as to the costs of this application."

I have therefore re-examined the whole matter in the light of the above exposition of the laws. In my opinion, paragraphs 1, 2, 3, 4, 5 and 6 of the defence are frivolous or vexatious and they are unnecessary or tend to prejudice, embarrass or delay the fair trial of the action and are an abuse of the process of the court. I therefore order that they be struck out and judgment be entered against the defendant for the sum of $37,960.11 with interest thereon at the rate of 5% per annum from the date of the issue of the writ and thereafter at 6% per annum on the $37,960.11 to date of payment. However, paragraphs 7, 8 and 9 of the defence are to remain. Costs in the cause to be taxed.

From the above judgment the defendant appealed to the Federal Court.

FEDERAL COURT.

J.C. Fong for the appellant.

Chan Kay Heng for the respondent.

Cur. Adv. Vult.

Lee Hun Hoe C.J. (Borneo) (delivering the judgment of the Court): This is an appeal from an interlocutory order. Respondent/plaintiff alleged that between 1974 and 1976 he had paid on behalf of appellant/defendant the total sum of $114,707.73. Out of this amount appellant had paid $76,747.62 leaving a balance of $37,960.11 for which he sued appellant. In addition, he also claimed a sum of $43,915.20 which he alleged to have lent appellant. By his defence consisting of nine paragraphs appellant denied the claims. The first six paragraphs are concerned with the $37,960.11 while the remaining three paragraphs with the money lent.

By summons-in-chambers respondent applied to have the defence struck out. On November 26, 1977 the learned judge in making an order for payment into court of $37,960.11 stated: —

"I am satisfied that the defence has raised triable issues but I am doubtful as to the bona fide of the defence relating to money paid by the plaintiff on behalf of the defendant. I therefore make an order that unless the defendant pays into court the sum of $37,960.11 within fifteen days from date hereof, the defence relating to this claim should be struck out and the plaintiff be at liberty to enter judgment against the sum claimed. Subject to this condition, the application is refused. I make no order as to the costs of this application."

On application of appellant under the four days' rule the learned judge heard further arguments. In his judgment dated February 18, 1978 the learned judge agreed that he had no jurisdiction to grant conditional leave to defend and he was wrong to order payment into court as the application was not made under Order 14 but under Order 19 rule 19 and rule 27, Order 21 rule 1 and Order 25 rule 4. He ordered the said passage to be expunged from the record. However, he held that the first six paragraphs of the defence to be frivolous and vexatious and they were unnecessary or tend to prejudice, embarrass or delay the fair trial of the action and are an abuse of the process of the court. Consequently, he ordered them to be struck out and entered judgment against defendant for the sum of $37,960.11.

Appellant submitted that the learned judge was right to say that the defence had raised triable issues but was clearly wrong to strike out part of the defence. Further, respondent also conceded that the defence did raise triable issues. In this particular case triable issues were clearly raised. A perusal of the statement of account filed by respondent shows many controversial items which could only be determined by a proper trial. As there are triable issues the proper course would be for the issues to be tried in the usual manner in open court. The power to dismiss an action summarily without permitting a party to proceed to trial is a drastic power and should be exercised with utmost caution. The power of summary procedure should only be resorted to in plain and obvious cases. The present case is not one of those plain and obvious cases. Accordingly, we allowed the appeal and ordered the defence to be restored and gave the defendant unconditional leave to defend. Costs in the cause. Deposit to be refunded to appellant.

Appeal allowed.

Solicitors: *Reddi & Co.; Chan Kay Heng.*

MALAYSIA NATIONAL INSURANCE SDN. BHD. v. ABDUL AZIZ BIN MOHAMED DAUD

[F.C. (Raja Azlan Shah, Wan Suleiman & Syed Othman F.JJ.) November 13 & December 9, 1978]

[Kuala Lumpur — Federal Court Civil Appeal No. 78 of 1976]

Road Traffic — Insurance — Person driving with expired driving licence — Whether covered by insurance policy — Construction of contract — Public policy — Road Traffic Ordinance, 1958, ss. 29 and 33.

Contract — Insurance — Person driving with expired driving licence — Whether covered by insurance policy — Construction of contract — Public Policy.

Insurance — Person driving with expired driving licence — Whether covered by insurance policy — Construction of contract.

The respondent was driving his father's car when it was involved in an accident. The policy of insurance covering the car stated that the company shall not be liable whilst the motor car was being driven by any person other than an authorised driver. The respondent and his father were named as the authorised drivers subject to the following proviso "Provided that the person driving is permitted in accordance with the licensing or other laws and regulations to drive the motor vehicle or has been so permitted, and is not disqualified by order of a court of law or by reason of any enactment or regulation in that behalf from driving the motor vehicle."

At the time of the accident the respondent had an expired driving licence but he had not been disqualified by any court for holding or obtaining a driving licence. The question arose whether the insurance policy was in force on the date of the accident. The appellants denied liability and relied on the exemption clause. The respondent argued that he was covered by the second limb of the proviso. He issued a writ to obtain a declaratory order and in the High Court Harun J. made an order that the indemnity applied to him in the circumstances of the case. The appellants appealed.

Held, dismissing the appeal: (1) the words "and is not disqualified by order of a court of law or by reason of any enactment or regulation in that behalf from driving the motor vehicle" following immediately after the words "has been so permitted" appear to indicate clearly that the appellants were contemplating the case of a person who has been permitted to drive but has been disqualified for holding or obtaining a driving licence by reason of a court order or by reason of age or physical or mental disability;

(2) as between the assured and the insurers, the exception clause in the proviso has on the ordinary principles of construction to be read against the insurance company, that is to say, if there were any doubt as to its extent and the question were to arise as to the liability of the insurers, the construction most favourable to the assured must be given to it;

(3) the question of public policy did not apply in this case, as the respondent had not been guilty of a wilful and culpable crime which made it contrary to public policy to allow him to be indemnified.

Cases referred to:-

(1) *Edwards* v. *Griffiths* [1953] 1 W.L.R. 1199.
(2) *Mumford* v. *Hardy & Anor.* [1956] 1 W.L.R. 163.
(3) *Tan Kwang Chin* v. *Public Prosecutor* [1959] M.L.J. 252.
(4) *Public Prosecutor* v. *Albert See* [1971] 1 M.L.J. 47.
(5) *Public Prosecutor* v. *Lim Ching Chuan* [1972] 1 M.L.J. 27.
(6) *Public Prosecutor* v. *Nasir* [1972] 2 M.L.J. 39.
(7) *Josephine Yii Chui Leng* v. *Public Prosecutor* [1973] 2 M.L.J. 47.
(8) *Cheong Bee* v. *China Insurance Co. Ltd.* [1974] 1 M.L.J. 203.
(9) *Smith* v. *Accident Assurance Co.* (1870) L.R. 5 Exch. 302, 307.
(10) *In the Estate of Crippen* [1911-13] All E.R. Rep. 207.
(11) *Beresford* v. *Royal Insurance Co. Ltd.* [1938] 2 All E.R. 602.
(12) *Hardy* v. *Motor Insurers' Bureau* [1964] 2 All E.R. 742.
(13) *Tinline* v. *White Cross Insurance Association Ltd.* [1921] 3 K.B. 327.
(14) *James* v. *British General Insurance Co. Ltd.* [1927] 2 K.B. 311.

HIGH COURT.

Khoo Eng Chin for the plaintiff.

Zainor bin Zakariah for the defendants.

Cur. Adv. Vult.

Harun J.: This is a claim for a declaration that the plaintiff is insured against third party risks and further that he is entitled to be indemnified by the defendants. The facts of the case are not in dispute and may be briefly stated as follows:

On August 3, 1974 the plaintiff was driving his father's motor-car BAK 6130 when it was involved in a collision with another motor-car AQ 2634. Both vehicles were badly damaged. The driver of AQ 2634 and his passenger sustained personal injuries.

Motor-car BAK 6130 was insured with the defendant company under Policy No. MP/15994 from December 16, 1973 to December 15, 1974 i.e. including the date of the accident. A certificate of insurance was issued for the same period in accordance with section 75(4) of the Road Traffic Ordinance 1958.

The plaintiff was stated in the policy to be an "authorised driver" subject to the following proviso:

"Provided that the person driving is permitted in accordance with the licensing or other laws or regulations to drive the Motor Vehicle or has been so permitted and is not disqualified by order of a Court of Law or by reason of any enactment or regulation in that behalf from driving the Motor Vehicle."

The plaintiff first applied for a driving licence in late 1972 when he was 18 years old. He was issued with a learner's licence and passed his driving competency test in March 1973. He was then issued with a driving licence for the period March 5, 1973 to March 4, 1974. His driving licence had since been renewed annually on August 8, 1974 and August 30, 1975. Prior to August 3, 1974 he had never been charged in any court in connection with a driving offence nor had he prior to that date been disqualified by any court from holding a driving licence.

It is the contention of the defendants that as the plaintiff did not have a valid driving licence on August 3, 1974 — it having expired on March 4 and was not renewed until August 8, the defendants cannot be held liable as insurers of Motor-car BAK 6130. In a letter to the plaintiff's father dated August 8, 1974 the defendants concluded by stating: "We are therefore repudiating liability against any claim made by you against us in connection to the above accident." There was an exchange of correspondence and finally on January 18, 1975 the plaintiff's father's solicitors wrote to the defendants asking that the matter be referred to arbitration in accordance with Condition 8 of the policy failing which they would take out a writ for a declaration which they did on March 27, 1975.

At the outset, I should say that as far as third party claims are concerned there is no difficulty since by Part IV of the Road Traffic Ordinance, 1958 there is a duty on the part of insurers to satisfy judgments against person insured in respect of third party risks.

What is at issue here is whether the plaintiff is entitled to be indemnified by the defendant insurance company or to put it in another way the question being whether:

(i) the insurance company will pay for the damages to his father's car;

(ii) will the insurance company pay for the damages to car AQ 2634; and

(iii) will the insurance company claim from his father what they had paid out to the driver and passenger of car AQ 2634.

The answer depends on the construction that is put on the proviso imposed for "authorised driver". It is common ground that that proviso consists of two limbs as follows:

"Provided that the person driving

(i) is permitted in accordance with the licensing or other laws or regulations to drive the motor vehicle;
or

(ii) has been so permitted and is not disqualified by order of a Court of Law or by reason of any enactment or regulation in that behalf from driving the motor vehicle."

The first limb is unmistakenly clear that is that the driver must have a valid driving licence. It is equally clear on the facts of this case that the plaintiff is not covered by this limb because his driving licence had expired or more precisely he did not hold a valid driving licence at the time of the accident. That leaves the second limb which can be broken up as follows:

(a) has been *so permitted* and

(b) is *not disqualified*

(i) by order of a court of law or

(ii) by reason of any enactment or regulation in that behalf

from driving the motor vehicle.

The word "disqualified" is used in the Ordinance when dealing with driving licences either for not issuing a driving licence or when one has been issued to prevent its continued use — see e.g. sections 26, 29, 30, 31, 31A and 33 of the Ordinance — disqualification by the court for having committed driving offences or disqualification from driving due to age or physical and mental fitness. Driving a motor vehicle without a licence is a prohibition not a disqualification under section 25: "...no person shall..." I am of the view that the proviso is intended to deal with drivers who are otherwise competent to drive but not holding a valid driving licence at the material time. This is to draw the distinction between such drivers and persons who have not been found competent to drive. I am satisfied that the second limb of the proviso does not refer to a current valid driving licence; if it did the proviso would not be in the disjunctive. The situation envisaged by the second limb is precisely that which plaintiff finds himself in — a technical lapse to renew his driving licence. This is the only ground on which the defendant company is repudiating liability.

There are a number of authorities which have construed this particular proviso in motor insurance policies. The Malaysian and Singapore cases are conflicting but as all were made by courts of co-ordinate jurisdiction I do not propose to express my views on them. The cases are: *Edwards* v. *Griffiths*,[1] *Mumford* v. *Hardy & Anor.*,[2] *Tan Kwang Chin* v. *P.P.*,[3] *P.P.* v. *Albert See*,[4] *P.P.* v. *Lim Ching Chuan*,[5] *P.P.* v *Nasir*,[6] *Josephine Yii Chui Leng* v. *P.P.*[7] and *Cheong Bee* v. *China Insurance Co. Ltd.*[8]

In the event I declared that the plaintiff was insured by and that he is entitled to be indemnified by the defendants against all sums including costs which he may become liable to pay to any third party in consequence of the accident of August 3, 1974 by virtue of the provisions of policy No. MP/15994 and costs on the higher scale.

From the above judgment the defendants appealed to the Federal Court.

FEDERAL COURT.

Zainor bin Zakariah for the appellants.

Khoo Eng Chin for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah F.J.: The facts which give rise to the present appeal may be briefly stated. On August 3, 1974 the respondent was driving his father's car BAK 6130 when it was involved in a collision with another car AQ 2634. Both vehicles were badly damaged. The driver of the latter car and his passenger suffered personal injuries. Car BAK 6130 was insured with the appellants under the provisions of Part IV of the Road Traffic Ordinance, 1958 from December 16, 1973 to December 15, 1974. The policy of insurance stated that "the company shall not be liable in respect of any accident loss damage or liability caused sustained or incurred whilst the motor vehicle is being driven by any person other than an authorised driver." The respondent and his father were named as the "authorised driver", subject to the following:

"Provided that the person driving is permitted in accordance with the licensing or other laws or regulations to drive the motor vehicle or has been so permitted and is not disqualified by order of a Court of Law or by reason of any enactment or regulation in that behalf from driving the motor vehicle."

At the time of the accident the respondent had an expired driving licence. He first applied for a driving licence in 1972 when he was 18 years old. He was issued with a learner's licence and passed his driving competency test in March 1973. He was then issued with a driving licence for the period March 5, 1973 to March 4, 1974. His driving licence had since been renewed annually on August 8, 1974 and August 30, 1975. Prior to August 3, 1974 he had never been charged in any court in connection with a driving offence nor had he prior to that date been disqualified by any court for holding or obtaining a driving licence.

In the circumstances the question arose whether the insurance policy was in force on the date of the accident and the test is not whether the insurers considered themselves on risk, but whether they were in law liable to indemnify the respondent. The appellants denied liability and relied on the exemption clause. The respondent argued that he was covered by the second limb of the proviso. He issued a writ in order to obtain a declaratory order, instead of taking the convenient course of issuing an originating summons. The case came before Harun J. who came to the conclusion that the indemnity applied to him in the particular circumstances of the case. He said: "I am satisfied that the second limb of the proviso does not refer to a current valid driving licence; if it did the proviso would not be in the disjunctive. The situation envisaged by the second limb is precisely that which plaintiff (respondent) finds himself in — a technical lapse to renew his driving licence. This is the only ground on which the defendant company is repudiating liability." It is from that decision that the appellants now appeal.

It is of course established law that in this case the motor insurance policy which is a contractual document, is subject to the same general rules of interpretation as any other written document: see *Smith* v. *Accident Insurance Co.*[9] One of those rules is that in any written document the words are *prima facie* to be construed "in their plain, ordinary, popular meaning, rather than their strictly precise, etymological, philosophic, or scientific meaning": see 22 *Halsbury's* Laws of England 3rd Ed. page 212 para. 402. Only if there is a clause in the policy which is open to two constructions, the court will construe it *contra proferentem*, that is, against the insurers. The question of interpretation, here, is centred on the second limb of the proviso. It is common ground that the respondent was not covered by the first limb of the proviso as his driving licence had expired some four

months before the date of the accident. Naturally a great deal of argument turned on the meaning to be attached to the phrase in the second limb "has been so permitted". It is also common ground that the words "not disqualified by order of a Court of Law, or by reason of any enactment or regulation in that behalf from driving the motor vehicle" is to be given a restricted meaning as not disqualified for holding or obtaining a driving licence by reason of an order of the court or by reason of disease or physical disability (section 29) or age or otherwise (section 33).

"Has been so permitted" has been construed by the appellants to mean has been so permitted in accordance with the licensing laws etc. as referred to in the first limb. It is said to be an extension of the first limb, thus conveying the meaning that the driver must be in possession of a current driving licence. In considering this contention, it becomes necessary to examine the authorities in order to determine what is the accepted meaning. The trend in judicial opinion that is discernible in the decided cases which are said to support the appellants' view, i.e., *P.P.* v. *Albert See*,[4] *P.P.* v. *Nasir*[6] and *Cheong Bee* v. *China Insurance Co. Ltd.*,[8] is that the courts are more ready to hold that the insurance company will not consider itself on risk when a person has broken a term of the insurance policy and he drives a motor vehicle with an expired provisional driving licence. Reliance was also placed on an observation of the learned judge in *Josephine Yii Chui Leng* v. *P.P.*[7] to the effect that driving a motor vehicle with an expired driving licence bears the same legal consequences as driving with an expired provisional driving licence. Such observation in turn rested its authority on *Albert See's* case, *supra*, which specifically related to a case of a learner driver driving without "L" plates and driving with an expired provisional driving licence. In my judgment, *Josephine Yii's* case, *supra*, is limited to its particular facts. In that case the insurance company considered itself on risk on the date of the alleged offence and that must have been one of the material factors which the learned judge took into account in arriving at his conclusion. If an insurance company had told the court that it considered itself on risk, the mischief at which the Road Traffic Ordinance is aimed did not arise, for, if an accident had taken place, it would have indemnified the assured so that the injured person would recover the money. It would not be necessary or appropriate to disagree with the factual basis on which the decision rests, but I must confess that I cannot follow it in so far it decides on the analogy of "driving with an expired provisional driving licence". The reliance on *Albert See's* case, *supra*, is misplaced for there are important differences between the two cases. I do not find it necessary to pursue or elaborate the discussion of that topic here. No doubt it obviously calls for closer examination in an appropriate case. It is seldom that a court involved in a matter such as the present is not referred to some of the authorities. However I would once again emphasise what has so often been said before, that precedents are not to be slavishly followed; a case may be followed only for its strict *ratio decidendi*.

In my view the two limbs of the proviso are in the disjunctive; they must obviously refer to two different sets of circumstances excluding liability. The first limb is quite plain. It envisages the case of a person who is the holder of a driving licence authorising him to drive a motor vehicle of that class or description (section 25). What is the meaning of the phrase in the second limb "has been so permitted"? According to the evidence before the learned judge, the appellants read the proviso, in particular the phrase under consideration, as not putting them on risk when the motor vehicle was being driven by the respondent with an expired driving licence. If that was the construction of the meaning of the phrase which was possible on the wording of the proviso, one would be able to say that the learned judge had erred in arriving at his decision, but it appears to me that the meaning is not open to doubt. The words "and is not disqualified by order of a Court of Law or by reason of any enactment or regulation in that behalf from driving the motor vehicle" following immediately after the words "has been so permitted" appears to me to indicate clearly, and I see no sufficient reason in any of the arguments for departing from the unequivocal meaning, that the appellants were contemplating the case of a person who has been permitted to drive but has been disqualified for holding or obtaining a driving licence by reason of a court order or by reason of age or physical or mental disability. It also seems to me that as between the assured and the insurers, the exception clause in the proviso, on the ordinary principles of construction has, as far as possible, to be read against the insurance company, that is to say, if there is a doubt as to its extent, and the question were to arise as to the liability of the insurers, the construction most favourable to the assured must be given to him, but I have come to the conclusion that the learned judge was right in the interpretation he put on it.

It remains then to consider the question of public policy. It was submitted on behalf of the appellants that it would be contrary to public policy if it is to be construed that they were required to cover the respondent who was unlawfully on the road by reason of driving a motor vehicle with an expired driving licence. This rule of public policy which is in fact a branch of the rules of ethics is no easier to define than the meaning of the phrase "has been so permitted". Broadly speaking, the principle in the context of insurance law is that no man is allowed to profit at another person's expense from his own conscious and deliberate crime. Thus the murderer in *In the Estate of Crippen*[10] and the felonious suicide in *Beresford* v. *Royal Insurance Co. Ltd.*[11] have had their claims defeated on the grounds that it would be contrary to public policy to assist a personal representative to recover what were in fact the fruits of the crime committed by the assured. In *Hardy* v. *Motor Insurers' Bureau*[12] Lord Denning MR in the course of his judgment said:

"If Phillips (that was the driver in the case) had taken out a policy of insurance in those terms, and had afterwards been guilty of murder by deliberately running down a police officer or, as here, had been guilty of maliciously causing grievous bodily harm with intent, what would the legal position be? Assume that he had been convicted of the felony and had been afterwards made to pay damages to the widow or to the person injured, could he have claimed indemnity

under the policy? Clearly not, for the good and sufficient reason that no person can claim reparation or indemnity for the consequences of a criminal offence where his own wicked and deliberate intent is an essential ingredient in it...."

and he cited *Beresford* v. *Royal Insurance Co. Ltd.*, *supra*, and went on:

"This rule is not rested on an implied exception in the policy of insurance. It is based on the broad rule of public policy that no person can claim indemnity or reparation for his own wilful and culpable crime. He is under a disability precluding him from imposing a claim."

On the other hand the motor manslaughter cases are not within these classes of cases and public policy does not prevent the enforcement of an indemnity: see *Tinline* v. *White Cross Insurance Association Ltd.*[13] and *James* v. *British General Insurance Co. Ltd.*[14] The reason behind it seems to be that the act to be indemnified is one intended by law that people should insure against. The logical test is whether the person seeking indemnity is guilty of a deliberate, intended and unlawful violence or threats of violence. Road traffic cases, e.g., manslaughter on the road by gross negligence, negligent driving and the like are not wilful and culpable crimes which make them contrary to public policy to allow a person to be indemnified. In the circumstances, having carefully reviewed the question of public policy, I do not think it applies in this case.

I would dismiss the appeal with costs.

Wan Suleiman and **Syed Othman F.JJ.** concurred.

Appeal dismissed.

Solicitors: *Rithauddeen & Aziz; Khoo & Sidhu.*

GOVERNMENT OF MALAYSIA & ORS. v. LOH WAI KONG

[F.C. (Suffian L.P., Raja Azlan Shah, Wan Suleiman, Chang Min Tat and Syed Othman F.JJ.) February 13, 1979]

[Kuala Lumpur — Federal Court Civil Appeal No. 87 of 1978]

Constitutional Law — Personal liberty — Right of citizen to leave country and to travel overseas — Right to a passport — Federal Constitution, arts. 5 and 9.

Passport — Grant of passport — Discretion — Exercise of discretionary powers — Passport Act, 1966, s. 2.

Administrative Law — Discretion in granting passport — Government should not act mala fide or in other ways abuse its discretion.

The respondent had applied for an order directing the appellants to issue a Malaysian passport to him. He contended that he had a fundamental right to travel abroad and that the refusal of a passport violated this right. The learned Judge rejected the application (see [1978] 2 M.L.J. 175) but in the course of the judgment made certain observations on the law to which the appellants took objection. He held in effect that the refusal or delay in granting a passport was tantamount to preventing the appellant from leaving the country and was in violation of his right of personal liberty under article 5(1) of the Federal Constitution. The appellants appealed and the respondent cross-appealed.

Held: (1) personal liberty in article 5 of the Federal Constitution means liberty relating to or concerning the body of the individual; that Article does not confer on the citizen a fundamental right to leave the country. On the contrary the government may stop a person from leaving the country if, for instance, there are criminal charges pending against him;

(2) article 5 does not confer on the citizen a fundamental right to travel overseas;

(3) article 5 does not confer on the citizen a right to a passport. The government has a discretion whether to issue or not to issue, delay the issue of or withdraw a passport, for instance if criminal charges are pending against the applicant. The exercise of this discretion is subject to review by a court of law, as in the case of other discretionary powers.

Cases referred to:-

(1) *A.K. Gopalan* v. *State* A.I.R. 1950 S.C. 27.

(2) *Rex* v. *Brailsford* [1905] K.B. 730.

(3) *Satwant Singh Sawhney* v. *D. Ramarathnam* A.I.R. 1967 S.C. 1836, 1840, 1843.

The following cases were also referred to: *Public Prosecutor* v. *Musa* [1970] 1 M.L.J. 103; *Assa Singh* v. *Menteri Besar, Johore* [1969] 2 M.L.J. 45; *Joyce* v. *Deputy Public Prosecutor* [1946] A.C. 370; *Koon Hoi Chow* v. *Pretam Singh* [1972] 1 M.L.J. 180, 182; *Datuk Haji Harun bin Haji Idris* v. *Public Prosecutor* [1977] 2 M.L.J. 165; *Public Prosecutor* v. *Su Lian Yu* [1976] 2 M.L.J. 131; *Kent* v. *Dulles* (1958) 2 Law Ed. 1204.

FEDERAL COURT.

Lim Beng Choon (Senior Federal Counsel) for the appellants.

Jag-Jit Singh for the respondent.

Cur. Adv. Vult.

Suffian L.P. (delivering the judgment of the Court): Mr. Loh Wai Kong ("applicant" but before us respondent) was a student in Australia and in January 1966 married. On April, 1975, he left Australia to come back home and, because he had been granted a Resident Visa entitling him to live permanently in Australia, his Malaysian passport was endorsed by the Australian Government with an Authority to Return valid for three years from that date.

On August 2, 1976, he was charged in court in Ipoh with criminal offences. His passport was surrendered to court as a condition of bail.

On March 2, 1977, his passport expired and on June 9 that year it was returned to him at his request. If it was his intention to go overseas, the passport would not have helped, because no airline would accept a passenger without a valid passport.

On a date that is uncertain (but nothing turns on this) he applied for a new passport.

It was important that he should get it and quickly so that with it he could travel to Australia and there show the Australian Government the expired passport stamped with the Authority to Return to Australia, and request them to stamp the new passport also with an Authority to Return — which must be done before April 25, 1978, the date of the expiry of the old Authority.

Our Immigration Department refused to issue the applicant a new passport. The criminal charges were still pending.

There was correspondence between them and the applicant's solicitors, who eventually were told by letter of February 3, 1978, that the reason for so refusing was because the issue of a passport was within the Royal prerogative of His Majesty the Yang Dipertuan Agung. At the hearing Immigration gave